

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NASDAQ, INC.,

Plaintiff,

-v-

EXCHANGE TRADED MANAGERS GROUP, LLC, and
ETF MANAGERS GROUP, LLC,

Defendants.

17 Civ. 8252 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has carefully reviewed the parties' competing letters (Dkt. 128, 132) addressing defendants' request for a ruling that Nasdaq has waived privilege as to DX-854. The Court has also reviewed, *in camera*, DX-854. The Court declines to issue such a ruling. The Court finds that the production of this privileged document was inadvertent and not reckless. Nasdaq was therefore within its rights to claw back the document pursuant to the protective order in this case.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: May 8, 2019
New York, New York